IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8023 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PINA JAGAT DHRUV

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8023 of 1998

MR MUKUND M DESAI for Petitioner No. 1

MS NANDINI JOSHI, AGP for Respondents No.1&2

RULE SERVED for Respondents No. 3

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 05/11/2001

ORAL JUDGEMENT

1. Pina Jagat Dhru, petitioner has filed this petition praying for a writ of mandamus or any other appropriate writ, order or direction against the

respondents namely Secretary, Education Department respondent No.1 and Commissioner of Higher Education respondent No.2 declaring that the petitioner is lecturer and she is entitled for the pay scale of Rs.2200-4000 as per Mehrotra Pay Commission. The petitioner further prayed that the respondent authorities be directed to pay her the pay scale of Rs.2200-4000 with effect from 1.1.1986 or the date on which she has become entitled for the same and pay arrears with interest @ 12% and give all consequential benefits to the petitioner considering her as lecturer from the initial date of her appointment.

2. The facts giving rise to this petition are as under:-

2.1 Petitioner was serving with respondent No.3 L.D.Arts College as Computer Programmer and was possessing requisite qualification for the appointment of lecturer and was serving with respondent college since last so many years. The petitioner states that she was discharging her duties as teacher in the subject of Computer even though she has been designated as Programmer. Her workload of lecturer is also included in the work load of all the teaching staff sent to the university every year under the provisions of Ordinance of the Gujarat University Ordinances and Statutes. The then Vice Chancellor on 11.6.1984 appointed one committee and the committee by its recommendation dated 11.6.84 recommended for the introduction of computer subject as optional subject with effect from academic year starting from June 1984 and in order to teach subject qualification as well as syllabus was laid down in the meeting of academic council of the Gujarat University dated 22.6.1984.

2.2 It is the contention of petitioner that though petitioner and other teachers (petitioners) who were teaching the subject of computer were as a matter of fact discharging their duties as lecturers but they were not given nomenclature of lecturer they were labelled or designated as programmer and were given pay scale as per Desai Pay Commission of Rs.550-900 as Computer Programmer.

2.3 It is the case of the petitioner that petitioner as well as other persons who were teaching the subject of computer were discriminated from the very beginning and instead of treating them as lecturer and giving them pay scale in the scale of Rs.700-1600 they were given the pay scale of Rs.550-900. It was further submitted that the petitioner and other programmers have formed an

association known as `Gujarat University Affiliated Colleges Computer Teaching Staff Association' and time and again the association has made representation to the authorities concerned jointly as well as individually even then their demand to treat them as lecturer with effect from 1.1.86 or from their initial date of appointment i.e. when the subject was introduced in the syllabus of the universities of Gujarat from academic year 1984 onwards.

2.4 It is the contention of the petitioner that the respondents authorities have not taken care to redress the grievances of the petitioner however Government issued resolution dated 3.8.98. By that resolution instead of giving pay scale of Rs.2200-4000 the petitioner was equated with the clerical staff and given pay scale of Rs.1640-2900 and from 1.1.86 upto 31.12.95 till her pay is to be notionally fixed as per Government Resolution which is in clear violation of principles of natural justice and right to equality guaranteed under Article 14 of the Constitution of India. The same is contrary to the law laid down by the Hon'ble Supreme Court that equal pay must be given for equal work. It was further submitted that on 22.6.84 the Academic Council in its meeting has laid down the criteria for the post of programmers which are equivalent to the post of lecturers even then the petitioner is denied the pay scale existing at the relevant point of time i.e. Rs.700-1600.

2.5 It has been further stated that all the employees working in the Government, Semi Government and Colleges etc. on or about 1.1.86 were given new pay scale and the lecturers pay scale was revised from Rs.700-1600 to Rs.2200-4000 but the teachers of the computer subject were denied the revision of pay nor they were given senior scale or selection grade after 8 years or 16 years respectively.

2.6 It has been further stated that on 18.8.93 one Anil H.Contractor who has approached the Gujarat Affiliated Colleges Services Tribunal by way of Application No.122 of 1992 wherein the Tribunal held that the applicant in that matter was entitled for the pay scale of Rs.2000-3500. The petitioner has annexed the copy of the said judgment at Annexure `C' page 21 of the petition. Thereafter the Gujarat University has recommended by its recommendation on 14.4.91 the pay scale of Computer Science Programmer.

2.7 The Academic Council by its recommendation dated

23.9.1991 also accepted the recommendation. Not only that the committee has accepted to treat the programmer as lecturer but pay scale suggested is Rs.2000-3500 i.e. again discrimination. The Librarians who are working in the colleges somewhere in October 1985 and who have been appointed prior to 19.12.1983 were given relaxation in the minimum qualification and given all the benefits available to the post of lecturer and treating them equivalent to the lecturers and giving the same pay scale.

2.8 It was further contended that the Gujarat University has passed a resolution proposing pay scale of Rs.2000-3500 and they were considered as equivalent to the lecturer though lecturer's nomenclature was not given to them at the same time qualification criterias were upgraded.

2.9 As the petitioner was denied the benefit though she was teaching Computer as a subject, the present petition has been filed praying for relief which has been set out earlier.

3. When the matter was placed for hearing before this Court on 12.10.1998 this Court issued notice returnable on 5.11.98 and therefore on 22.3.99 this Court admitted the matter but interim relief was refused.

4. Mr.Mukund Desai, learned counsel appeared on behalf of the petitioner and Ms.Nandini Joshi, learned AGP appeared on behalf of the respondents no.1 and 2.

5. Mr.Desai, learned counsel for the petitioner submitted that without going into the merits of the matter if this Court directs the Government to constitute a Committee and if that Committee consider the grievances of the petitioner, the matter can be disposed of accordingly.

5.A It has been further submitted by the learned advocate for the petitioner that even the Physical Instructor who is looking after sports and other activities in the college was also treated as lecturer eventhough he is not discharging any teaching activity his post has been equated with the post of lecturer and he has given pay scale of lecturer with all other consequential benefits.

5.B Learned advocate further submitted that the Government has already revised the pay scales of librarian and physical training instructors of arts,

science, commerce and education colleges w.e.f. 1.4.80 which has been produced at Annexure `M' to the petition where the Government Resolution dated 19.12.1983 has been referred where the pay scale of librarian and physical training have been shown in this behalf.

6. In view of the aforesaid submissions made by the learned advocate for petitioner and in view of the fact that this matter is of 1998 and ordinarily the matter will be taken up for hearing after 10 years by that time several employees may retire and some of the persons may die to that extent the petition become infructuous. In view of this situation, this Court is of the view that, the matter may be disposed of by giving some suitable directions to the Government in this behalf in the interest of justice. However, it may be noted at this stage that this Court has not considered anything on the merits of the matter either the contentions of the petitioner or of the Government. The learned AGP has also tried to support the order of the Government from time to time.

7. In view of the aforesaid facts and circumstances of the case, if following directions are given the same may be in the interest of justice.

(1) The Government will constitute a Committee consisting (1) Secretary Finance Department, (2) Secretary Legal Department, (3) Secretary Education Department and (4) Vice-Chancellor of relevant Universities and that Committee will consider the contents of the petitioner which has been raised in the petition and entire record of the petition will be treated as representation of the petitioner. Over and above if petitioner desire to file additional submission then it will be open for her to file written submission within two weeks from the date of receipt of the writ of this Court.

(2) After the Committee received such representation, the Committee will afford an opportunity of hearing to the petitioner and after hearing the petitioner the Committee will adjudicate the demand of the petitioner and the Committee will consider including the copy of the writ petition and the contentions raised there in and all the papers which have been submitted including the judgment of the tribunal which has been referred by the petitioner in this behalf.

(2.A) The Committee will also afford an opportunity of being heard to association of the teachers.

(3) The Committee will pass a short but speaking order in this behalf within four weeks from the date of receipt of said representation.

(4) The petitioner will make representation by 31st December, 2001, and the Committee will decide the said representation preferably by 28th February, 2002.

8. I have adopted this course only because High Court is flooded with the work and ordinarily this is of 1998 matter and therefore this matter will not be heard by this Court in near future because it will take about 8 to 10 years and for that time some of the employees may retire or some of the persons may die and further this petition relates to the pay scale of the petitioner and important question involved in this behalf and the contention raised by the petitioner is also based upon the question of fact and therefore the Committee will be best who can decide the pay scale of the petitioner in this behalf.

9. In view of the aforesaid observations and directions, the petition stands disposed of accordingly with no order as to costs. Rule is discharged in the aforesaid terms.

(K.M. Mehta, J.)

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